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LAURENCE C. BEGIN
L.C. BEGIN & ASSOCIATES PLLC
510 HIGHLAND AVE
MPB 403
MILFORD, MI 48381

EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,586

Applicant(s)

SUER ET AL.

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 8, 11, 12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 9, 10, 13, 14, 16, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Election/Restrictions

1. Applicant's election of Species II (Figs. 11-19) on 11/15/04 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 3, 5, 8, 11, 12, and 15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gagliardi, Jr. (5,771,771), hereinafter Gagliardi. Regarding claim 1, Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil and each of the plurality of blades is substantially laterally

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aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 38. The blades 38 are in two tiers and each blade is considered to be substantially laterally aligned to the remaining plurality of blades. The blades 38 are in proper relation and arrangement with respect to one another. Therefore, the blades 38 are aligned with respect to one another. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 2, Gagliardi teaches everything noted above including a hollow body 14 having an inner wall 20 and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a cross-sectional area, and a length greater than the cross-sectional area. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 4, Gagliardi teaches everything noted above including a base 42, which is fixed to the second end 26. See Figs. 1-5 in Gagliardi.

Regarding claims 9 and 10, Gagliardi teaches everything noted above including that the plurality of the blades 38 is fixed to the inner wall 20 and the open first end 24. See Figs. 1-5 in Gagliardi. The blades 38 are fixed to the inner wall 20 by being located within the grooves 30 and the inner wall 20 in a fixed position, since the blades do not rotate around the central axis 16 of the elongated body and are fixed within the interior of the elongated body 14. It should be noted that the claims do not recite that the blades are stationary and they do not move up and down relative to the hollow body.

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Regarding claims 16 and 17, Garliardi teaches everything noted above including a closed second end 26 and an elongated cylindrical food item 12. Garliardi also teaches that the cylindrical food item 12 is placed within the elongated hollow body 14 of the utensil 10 and the food item 12 is cut by the downward movement of the plurality of blades 38 through the polarity of the grooves 30 which are located along the length of the hollow body 14. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To the degree that it could be argued that the blades 38 are not substantially laterally aligned in Garliardi the Rejection below is applied.

6. Claim 1, 2, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garliardi. Regarding claim 1, Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in

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Gagliardi. Gagliardi does not expressly that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. The blades 38 are in two tiers and each blade in each blade 38 in each tier is substantially laterally aligned with the remaining blades in the tier. However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to omit or eliminate one of the tier of blades in Gagliardi, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184. In addition the use one tier of blades or blades which are substantially laterally aligned with respect to one another for cutting elongated food products is well known in the art such as evident in Aguerrevere et al. (5,271,317), Pesce (2,675,580), Priore (3,060,838), or Gagliardi, Jr. (5,069,914).

Regarding claim 2, Gagliardi teaches everything noted above including a hollow body 14 having an inner wall 20 and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a cross-sectional area, and a length greater than the cross-sectional area. Gagliardi also teaches Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 4, Gagliardi teaches everything noted above including a base 42, which is fixed to the second end 26. See Figs. 1-5 in Gagliardi.

Regarding claims 9 and 10, Garliardi teaches everything noted above including that the plurality of the blades 38 is fixed to the inner wall 20 and the open first end 24. See Figs. 1-5 in Garliardi. It should be noted that the blades 38 are fixed to the inner wall 20 by being located within the grooves 30 and the inner wall 20 in a fixed position, since the blades do not rotate around the central axis 16 of the elongated body and are fixed within the interior of the elongated body 14.

Regarding claims 16 and 17, Garliardi teaches everything noted above including a closed second end 26 and an elongated cylindrical food item 12. Garliardi also teaches that the cylindrical food item 12 is placed within the elongated hollow body 14 of the utensil 10 and the food item 12 is cut by the downward movement of the plurality of blades 38 through the polarity of the grooves 30 which are located along the length of the hollow body 14. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

7. Claims 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graliardi in view of Berler (4,250,771). Regarding claims 6, 7, 13, and 14, Graliardi teaches everything noted above including that the blades 38 are fixed to the handle 32, 50 which slide within the grooves 30 of the elongated hollow body 14. See Figs. 1-5 in Graliardi. It should be noted that the blades 38 are fixed within the interior of the elongated body 14. The blades 38 also are fixed blades since they are fixed to the cutter member 32 and as mentioned above to the interior of the elongated body 14. See Figs. 1-5 in Graliardi. Graliardi does not teach a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as

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taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Grialardi's utensil with the food receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

To the degree that it could be argued that the blades are not fixed to the interior of the hollow body the rejection below applied.

8. Claims 1, 2, 4, 6, 9, 10, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce (2,675,580) in view of Berler. Regarding claims 1, 2, 4, 9, 10, 16, and 17, Pesce teaches an appliance and a method for slicing hot dog including an elongated hollow body 10 for supporting an elongated food product 22 and the elongated body has an inner wall 13, and outer wall, a diameter, and a length. Pesce also teaches a plurality of blades 14 fixed within the interior extending across the interior 13. Pesce also teaches that the plurality of blades 14 is the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 14. Pesce also teaches a base 11 fixed to a second end of the hollow body 10. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-59 in Pesce. Pesce does not teach expressly that the length of the hollow body is greater than its diameter. However, Official notice is taken that that the utensil for slicing hot dog or the like and having a length greater than its diameter is well known in the art and is evident in Grialardi or in Aguerrevere et al. (5,271,317).

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9. Claims 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Berler. Regarding claims 6, 7, 13, and 14, Pesce teaches an appliance and a method for slicing hot dog including an elongated hollow body 10 for supporting an elongated food product 22 and the elongated body has an inner wall 13, and outer wall, a diameter, and a length. Pesce also teaches a plurality of blades 14 fixed within the interior extending across the interior 13. Pesce also teaches that the plurality of blades 14 is the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 14. Pesce also teaches a base 11 fixed to a second end of the hollow body 10. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-59 in Pesce. Pesce does not teach expressly that the length of the hollow body is greater than its diameter. However, Official notice is taken that that the utensil for slicing hot dog or the like and having a length greater than its diameter is well known in the art and is evident in Gagliardi or in Aguerrevere et al. (5,271,317). Pesce does not teach a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Pesce's utensil with the food receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

Response to Arguments

10. Applicant's arguments filed on 07/27/04 with respect to claims above have been considered but they are not persuasive. Applicant's argument that Gagliardi does not teach that each of the plurality of blades is substantially and laterally aligned with the remainder of the plurality of blades is not persuasive. Gagliardi teaches that the plurality of blades 38 is the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 38. The blades 38 are in two tiers and each blade is considered to be substantially laterally aligned to the remaining plurality of blades. The blades 38 are in proper relation and arrangement with respect to one another. Therefore, the blades 38 are aligned with respect to one another. Furthermore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to omit or eliminate one of the tier of blades in Gagliardi, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184. Moreover, the use one tier of blades or blades which are substantially laterally aligned with respect to one another for cutting elongated food products is well known in the art such as is evident in Aguerrevere et al. (5,271,317), Pesce (2,675,580), Priore (3,060,838), or Gagliardi, Jr. (5,069,914). Applicant's argument that Gagliardi does not teach that the blades are fixed within the interior of the hollow body as set forth in claim 13 and a fixed plurality of blades within the elongated hollow body as set forth in claim 14 is not persuasive.

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Gagliardi teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of the blades See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi. With regard to claim 13, Gagliardi teaches that the blades 38 are fixed within the inner wall 20 by being located within the grooves 30 and the inner wall 20 in a fixed position, since the blades 38 do not rotate around the central axis 16 of the elongated body and are configured to be fixed or hold within the interior portion of the elongated of the elongated body 14. The blades considered to be fixed within the interior of the elongated body, since they are hold by the interior body in a fixed position that limits the movement of the blades only to the up and down movements of the blades within the elongated body. It should be noted that the claims do not recite that the blades are stationary and do not move up and down relative to the hollow body. Regarding claim 14, Gagliardi also teaches a fixed plurality of blades 38 within the elongated Body 14. The blades 38 also are fixed blades since they are fixed to the cutter member 32 and as mentioned above to the interior of the elongated body 14. The fixed blade 38, which are fixed to the cutter member, are located within the interior of the elongated body 14.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (too-free).

GA/ga

January 18, 2005


Allan N. Shoap
Supervisory Patent Examiner
Group 3700